

BOARD OF ZONING APPEALS

Minutes

March 27, 2001

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas, was held at 1:30 p.m., on March 27, 2001, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following Board members were in attendance: JOHN ROGERS, JAMES B. SKELTON, FLOYD PITTS, JAMES RUANE. The following Board member were absent: BRADLEY TIDEMANN, MARY DE SENA , RANDY PHILLIPS.

The following Planning Department staff members were present: DALE MILLER, Secretary, SCOTT KNEBEL Assistant Secretary, Recording Secretary, ROSE M. SIMMERING.

Also present: SHARON DICKGRAFE -- Assistant City Attorney.

Also present: J.R.COX – Commercial Plan Review/Commercial Zoning -- Office of Central Inspection.

PITTS: It is now 1:35 p.m. and we will call the Board of Zoning Appeals to order for March 27, 2001. Number Item one on the Agenda is approval of meeting minutes for February 27, 2001. It has been brought to my attention that there is some ambiguities involved, that some of the statements by one of the members has been confused with the statements actually made by another and until we get a chance for those two persons to talk, I am moving that we defer the approval of these minutes until the next meeting.

PITTS moves ROGERS seconds to defer the minutes of February 27, 2001.

MOTION carries 4-0.

PITTS: Item number two case number BZA2001-0001.

KNEBEL: This item was before you at your last month's meeting and let me just put it up here on the screen here to refresh everybody's memory. The request was for a reduction in the side yard setback for a carport and the Board deferred the request in order to allow the applicant to meet with the Office of Central Inspection to determine if there was sufficient room to reduce the setback and still provide a carport that was functional as far as width for a car to drive into it. I understand the applicant has meet with Central Inspection but I do not believe that all the issues have been resolved. Mr. Garcia is here from Central Inspection if you would want to ask him some questions about where we are but I think the Item will need to be continued again.

PITTS: What is the Gentlemen's name from Central Inspection?

KNEBEL: Is it Jim Garcia is that right?

PITTS: Jim, will you approach the microphone and bring us up to date, please.

JIM GARCIA, BUILDING CONSTRUCTION INSPECTOR FOR THE OFFICE OF CENTRAL INSPECTION: In regards to 813 N. Volutsia, the carport was constructed about 1 ½ year ago. The Unified Building Code requires a 6' setback in the front half of the property. In this particular as built carport, we have one foot from the property line to the supporting post, which is five feet deficient for Code requirements. I have pictures if it is kind of hard to visualize verbally but I can pass these pictures around and give you an idea what we are talking about.

It is my understanding that the homeowner confused the property line to the north face of the existing house to the north. He assumed that was the line of 6' setback to his carport. Currently, like I said, we have 1' from the assumed property line and we have asked the gentlemen to supply us with either a survey or a neighbor's site plan, or the seller that sold him the house maybe they had a legal description where we could identify property pins. But that has not come to us as of this date so anything what I am saying it would be an assumption without knowing exact location of property line. But, as it appears the fence line, which is 95% of the time it is the property line. But, here again I want to stress that if we continue to be in assumption it is not 100% accurate.

PITTS: Did you happen to measure the distance between the south front corner of the adjacent property to the north and the post that supporting the carport?

GARCIA: Yes, that dimension I think was, 8 feet 3 inches.

PITTS: Do you have any other comments?

GARCIA: Not at this time, it is all that I have to offer was the setback existing as built.

SKELTON: It appears that some of the roof support beams, are they actually hanging over the property line to the house adjacent to it?

GARCIA: Yes, they are in fact they are about 1 foot 6 inches, so 6 inches of the overhang is into the adjacent property line on the vertical.

RUANE: As near as we can tell the support post themselves are right on the property line?

GARCIA: No, they are 1 foot south of the property line.

RUANE: And so then the overhang goes 2 feet?

GARCIA: A foot and half, 18 inches. So there is a 6-inch encroachment to the adjacent property.

PITTS: Ok, are there any other questions from the bench for Mr. Garcia? Thank you Mr. Garcia, I don't have any other questions at this time. I was wanting, to ask the applicant or his agent, is the applicant or agent or both present today? You are Mr. Mendoza?

CESAR MENDOZA, AGENT AND INTERPRETER FOR THE APPLICANT VINCENTE SOTO, 8626 W. Westlawn, Apt 501, Wichita, KS 67212: Correct.

PITTS: Mr. Mendoza would you approach the microphone, maybe both of you because I want to ask a couple of questions. I wanted to make sure that Mr. Soto understood what we were talking about at the last meeting and one of the main things that we talked about was the rafters were running over what appears to be the property line to the adjacent property and that they had to?

MENDOZA: Okay, at the last meeting you had I was not present. So I do not know what was exactly was told to him. Let me tell him what you said to see if he is aware of that?

PITTS: Yes, I would like to know if he is aware of that?

Discussion between Mendoza and Soto, Mendoza responds: He said that he understood that.

MENDOZA: I have been helping him with this and I work with him and we are pursuing to identify the property line with a survey. We asked this neighbor right here if she had one because she is having I think she is having a fence built on the other side of her property. So we are thinking that she should have had a survey now or maybe had one in the past that identifies the property line where her fence is, whether that is correct or not we don't know most of the time according to Mr. Garcia, it is right but then there is that small percentage that it could be wrong her property line might be farther towards her house. So we are trying to find the survey which at this point, she don't have one, and he is going to have pay for one which is we were quoted about \$500.00 to pay for that survey to identify that property line. He just is wanting a little bit more time to identify that so that he can get a survey from the title company so that he can have that official and be absolutely sure where that property line is at.

He said he understood the last time that these 2 X 6 I think they are hanging 6 inches into her property line and he will be willing to put that farther back just enough to get the car by and see if that was possible but he did not want to cut anything off or do anything more until he got the proper survey for his property line.

Discussion between Mendoza and Soto, Mendoza responds: He said that he is more than willing to find the property line and get the proper survey, it is just going to take him a little bit more time because it is expensive on him to do that.

PITTS: So, you were really not ready for us to rehear this today?

MENDOZA: No, he is not ready. He was really coming here today to ask for an extension and see if he can identify where the actual property line is and see if in fact that is correct where it is at and see if it is even possible. Of course talking to the inspector and see if it is even possible if a car can be put in here. The car doors to open properly where a person can get in and out pretty easily, maybe not 6 feet from the property line maybe, 4 feet from the property line if that is possible, but we don't even want to get to that if we can't even get the survey first. We want to identify where the actual property line is at that is his plan, identify where that is at and see and figure out from that point to see if that is even possible to continue.

PITTS: So is he asking for a 60-day deferment?

MENDOZA: Right, any other questions for him?

PITTS: Is there any comments from the bench on this?

SKELTON: My comment Mr. Chairman would be I understand the applicant is trying to make corrections here, but shouldn't all this procedure about identifying the property line and such been done before the permit was drawn to begin with? I mean it is all after the fact here.

PITTS: Of course most of it is after the fact.

SKELTON: Of course it is.

PITTS: Because the carport is already up and he was asking for a variance to reduce the side yard setback.

SKELTON: The variance should have come before the construction.

PITTS: I agree but that is the same situation we were in last week.

KNEBEL: What happened in this instance was that the site plan that was submitted for the building permit indicated that the carport would comply with the 6-foot setback. When it was inspected after construction it was determined that it was not built according to the site plan that was submitted.

MENDOZA: Can we comment on that? Mr. Soto went to get the permit from the City for this carport. He took the dimensions of his property to them, they handed him the plans, they told him here is what you can do. When they gave him the plans he saw that it was not right to what he had or to the measurements that he gave them and they said that it would still work. This guy went home with a permit thinking it is okay, but what he did wrong was built it before the inspector got there. He went ahead of himself, but he got the permit first. That is what he is saying.

PITTS: I don't believe we are going to address that.

SKELTON: Another question that I would have is that where the property line is does it really matter at this point?

PITTS: It doesn't matter to us where it is fact.

SKELTON: Because no matter where the property line is he is still going to have to have a variance no matter what. So what my viewpoint would be for the neighbor here maybe not today but next year when they sell the house or whatever you are still going to have that encroachment.

PITTS: The encroachment would be there.

SKELTON: I don't see what difference it is going to make where the property line is quite frankly on my point of view. Because my opinion is on this case hasn't changed since the last meeting.

PITTS: Is there any other comments from the bench? Did you have something else that you wanted to add Mr. Garcia? Please approach the microphone.

GARCIA: Normal construction inspection sequence is always before the footings are poured the building inspector will visit the site, and verify the setback and verify the depth of the footings. That inspection was never called for until after it was framed out, I wanted to clarify that part. Had they called for inspection, the inspector would have caught that error regardless who had made it whether it was the plan review or the permit writers everybody makes error because that inspection was not called in and that is why it has got this far.

PITTS: This would not be the first instance in which we have ruled on a variance when the structure was already in place and a lot of them have been further along than this one and absolutely complete. I would like to be able to accommodate the applicant but it appears we are not communicating for some reasons or other. He is not either understanding us or we are not understanding his unique situation and I think the Chair is open to whatever the Board finds.

GARCIA: One more point that I would like to add is that many times the permit writers do assume that the fence line to be the property line. I have got to say that but in this case where we are wanting exact dimensions what I say from now on would be an assumption and I want to get that point across. There still lacks the sequence of construction inspections regardless of what takes place today we still have to look at the footings and the post and framing part of it.

PITTS: Thank you. Mr. Rogers do you have any comments?

ROGERS: I feel unfortunate for the applicant. But if everyone in the neighborhood took this approach on constructing something the whole neighborhood would be in a mess. If I understand correctly that really how can a carport be built at this location and fit within the Code? Is it possible?

PITTS: I am sure that is not possible without granting a variance if the property line runs where we think that it does we would still have to grant a variance for

this to be possible and that is what they initially asked for. I have some problems with asking the applicant to go ahead and get a survey pending whatever we should do because we can grant a variance based on or we could deny the variance based on the setback from the existing property line without us having to know exactly where the property line is. But, at some given point in time if we grant a 1 ½ foot variance then it would have to be 1 ½ foot south of the existing property line and we don't have to determine where that is but it would have to be 1 ½ feet back and some given point in time it is determined that is not sufficient then the applicant has spent some money unnecessarily.

SKELTON: That is what I am saying.

RUANE: I agree. Can I see those pictures again? I think for a point of clarity, the applicant has requested that we defer this for 60-days to allow a survey etc. to be obtained. Does anyone desire to make a motion to that affect? Because I don't know but procedurally I think that we should at least recognize that as the first issue to be addressed if somebody wants to make a motion to that effect.

SKELTON: I was just going to agree with you Mr. Chairman in the fact that is going to go out and spend money and if he goes out and spends the money, I am telling you right now it is not going to make a bit of difference to me. Because, it is all right there it is not going to go anywhere anyway and I am sure, what is the actual discrepancy on where he thought the property line was and where you think it is? Can you help with that at all?

GARICA: What happened the applicant measured from the face of the south wall ...(CAN'T HEAR TESTIMONY HE IS NOT BEHIND MICROPHONE) Assuming the fence line is the property line

SKELTON: Based on that information I would not be in favor of granting of the variance for the fact that it is encroaching on the neighbor's property. I am not just thinking for today the future of the property. I think that it would affect the value, I sure wouldn't want it if it was my house.

PITTS: If the rafters were cut off right on the property line right where the post is would that be an encroachment?

GARCIA: No.

DICKGRAFE: But, he would still need a variance.

PITTS: Certainly he would need a zero and I think that he asked for a 1 ½ feet initially?

KNEBEL: It was unclear as to the distance that he was asking for.

MENDOZA: What he is telling me that why it was unclear the distance that he was asking. He wanted to first find out if in fact it is probably likely that this fence line is her property line. He is willing to cut this, move this pole over here more even if there is a possibility where he can put his car. He is not trying to

pass this structure as you see through here. What he is trying to say is before he does anything else he just wants to make sure that if in fact that is the property line and he gets a variance and he wants in conjunction with the inspectors find out if it is possible to put a car in here if these move back maybe not to 6 feet but maybe like 4 feet.

PITTS: I thought that was what he was supposed to be finding out between the last meeting and now.

MENDOZA: We did not get a chance to meet with them again. According to him what he was telling me last week and this week we tried to call the city inspectors and see if it was even possible. If we would have met we might not have been here today. He just wants to know that if it is possible to maybe not give him the 6 feet not go the 6 feet that it is suppose to maybe 4 feet maybe his car fits in there. That way there would be enough space here and nothing hanging over in the property line and these would be cut off. He wants to know if that is even possible.

GARCIA: We took field measurements and if the exact 6-foot setback was enforced there is no way the width of any vehicle could fit through that carport. So there has to be three feet, two feet, we would have to re-measure, here again assuming the fence line is the property line.

MENDOZA: That is his case what he was saying he wants to make sure that he is willing to take a chance and spend \$500.00 for the survey and find out where the property line is and in conjunction with the City Inspectors find out what if there is anything possible here. Whether he can move back away from this property and be alright with the owner of this property, he just wants to give that a shot. I think if he wants to spend \$500.00 that is totally up to him it is his loss. All he wants is the City Inspectors to work with him to see if it is possible to move those poles that whole thing not 6 feet maybe 4 feet maybe the car can fit in there.

PITTS: That is actually why we deferred this a month ago as the minutes will reflect and I don't know where it fell through the crack.

MENDOZA: What he failed to do Sir was to get with the City Inspectors again, where they met and they figure out if that is even possible maybe they didn't have to come back here again. Why we got to here I don't know it is hard for him he depends on people.

PITTS: Thank you very much. We need to have 4 people to vote in favor or opposition to the granting of anything and we only have a total of 4 people here today and I would make a motion that we defer this for 60 days.

PITTS moves to defer this for 60 days.

MOTION DIES FOR FAILURE TO GET A SECOND.

SKELTON: Mr. Chairman, my opinion would be that this project would not meet the five criteria on a variance. I don't think that it satisfies the uniqueness for example. I would like to vote to deny the variance.

SKELTON moves RUANE seconds: I MOVE THAT THE BOARD ACCEPT THE FINDINGS OF FACT AS SET FORTH IN THE SECRETARY'S REPORT; AND THAT ALL FIVE CONDITIONS SET OUT IN SECTION 2.12.590(b) OF THE CITY CODE AS NECESSARY FOR THE GRANTING OF A VARIANCE HAVE BEEN FOUND NOT TO EXIST AND THAT THE VARIANCE BE DENIED.

MOTION FAILS: 3-1.

DICKGRAFE: Which means that it will come up on the next meeting, unless you want to defer it for another meeting. We have an Appeal set for next meeting, which will be rather long and rather lengthy I am sure. It is up to the Board.

RUANE: What is your recommendation?

DICKGRAFE: I would defer it 60 days because I think the Appeal is going to take a large portion of your afternoon.

RUANE moves SKELTON seconds that this item be deferred for 60 days.

MOTION CARRIES 4-0.

PITTS: Would you explain to your applicant that this item has been delayed for 60-days or deferred for 60-days. That should give him plenty of time to get together with Office of Central Inspection, Surveys, or whatever they are going to require before you bring this back. Some of us won't be here 60 days from now.

MENDOZA: I told him that. He wants to spend the money and find out.

PITTS: Okay, Thank you very much.

DICKGRAFE: Mr. Mendoza we need you address apparently the notices that we have been sending you have been coming back from the post office.

MENDOZA: My address is written on the sign-in sheet.

DICKGRAFE: Thank you very much.

PITTS: Item number three BZA 2001-00002.

KNEBEL: The next item on the Agenda is two variances requested for signage associated with Wal-Mart we had a hearing on this case at the last meeting and I

will just briefly go through the signage. I think the applicant has brought a document that shows the signage on the elevations all in one- piece, which I think is a little easier to understand then what I am going through here. I guess I don't have a site plan in here but I will go back to the aerial then. At the last hearing the Board had requested a deferral or voted to defer this in order to receive additional information from the applicant.

PITTS: Does anyone care to add anything to the review before we ask to speak to the applicant?

RUANE: Let me make an administrative announcement here. I am employed as General Counsel for Fidelity Bank who has two different interests in this matter. One is that we have a leasehold within this superstore to operate a banking facility. Secondly we own and fee simple one of the out parcels that is shown on this map. So in the second capacity within the notice area and have received opportunity to object and have filed no protest or objection. But, for everybody's information I want you to know that, that's out there and that in that there are only four of us present today it does not seem to allow for an abstention.

PITTS: Do you have any type of conflict? I think it is up to you if you have a determination whether you feel that you have a conflict of interest.

RUANE: I don't think that I have a conflict because we have two different interest one would be seem to be for and would seem to be against. I guess that makes me unbiased.

PITTS: Legal do you have any interpretation of that?

DICKGRAFE: I would think that it would be up to him. The leasehold interest if that was Fidelity's only interest would cause me some concern giving the fact that I think Mr. Ruane is right because they are probably competing interest I would not view that as a direct conflict of interest.

RUANE: Where have you had to come from?

APPLICANT: Kansas City.

RUANE: This is your second time down? Can I ask him a question?

PITTS: We will let him approach first.

RUANE: I mean it was on this topic. Would you prefer to defer this until there would be enough members here that an abstention wouldn't high center this?

BOICE-RAIDL-RHEA ARCHITECTS, MICHAEL SEMRICK, AGENT: If you feel like there could be a conflict that is up to you.

RUANE: No, I don't think there is a conflict, but I think that it is important to make record if it were your choice that you would want to defer it we should entertain that now before we go forward.

PITTS: Please approach the microphone please.

SEMRICK: I am comfortable to go ahead. I have some handouts. As we stated last time we are actually going for two different variances. The first variance is for signage on an elevation that has less than 150 feet of parking area in front of it. What I had stated the last time is that we feel that this actual elevation which is shown on your sheet there, I think it is in the lower left corner it has the Wal-Mart Tire Lube Express with an oil logo on it. That this is actually a continuation, I mean it is a front facing façade going all the way around. So we feel it would actually be a part of the front façade that would include the entire parking area. We feel that if this is actually considered to be a separate façade, with different parking area then if you look at that elevation where each pilaster breaks up that wall then I would think that you are technically saying you have several different elevation on the front face there itself. So what we are asking is that this could be included in the front elevation to have that 6 to 8 hundred feet of parking area whatever it may be to be used as the parking area therefore we have meet the 150 feet of criteria set forth in the ordinance and would be allowed to put the signage on there if granted a variance for additional signage later on.

It was noted in the last case that there was a concern that a lot of this signage was more for advertising purposes rather than for informational. This signage on this particular elevation will not be visible from anywhere really unless you are coming around the south end of the building, heading west or heading west I believe on 21st Street. It is purely to identify that part of the building as the Tire, Lube Express, with the Wal-Mart Tire Lube, I can't argue that the Penzoil or the Quaker logo sign on there that is purely advertisement for what type of oil they use and I can't argue that. However, the bay signs there was a statement mentioned last time that the customer actually doesn't drive their car into the building. This store defers a little bit from the store that was already in place in town on Rock Road where is that you have lanes that the customer pulls up to the bay for the service that he desiring he doesn't actually drive into the store but he does pull up to whatever specific service he is coming for and leaves his car there and then the people drive it in.

Just driving around and looking at several of the other different kinds of Oil and Lube Auto repair businesses, each one that I saw around town, Firestone, GoodYear, whatever, each of them have the same exact it may be Tires, Brakes, Oil and Lube above their doors pretty much anywhere through town the same exact setup. Almost all of those places work exactly alike. The customer doesn't drive into the bay. Whatever known reason, insurance, but they do usually pull up and a directional sign of saying which door and what service you are going into and that it why we are requesting those signs there.

To move onto the second variance where we are asking for an additional amount of signage. I want to again state that the report, I made a mistake in the amount that we are requesting we had originally decided to go ahead and reduce the 1245 listed in the report of 1,245 square feet that we are requesting we reduced that to the 993 square feet that is what we are actually looking for this location here and that is total square footage.

I would like to point out also that we were currently under the ordinance we will be allowed approximately 3,400 square feet of signage. We are limited though to three signs and that is why we are here is to ask for an additional amount of signage not a greater amount of square footage just an additional total number of signs.

I would like to refer to the five criteria here and just kind of go over that on how I think that we meet each point.

The first one being the uniqueness, I think this project is very unique from other "big box" retailers that you have in town. Number one being the size, this store is going to be about 208,043 square feet that is much bigger than any other building I think you are going to have in town. The design of this building as you will see on the renderings there is far greater than any other "big box" retail business than I have seen in Wichita here. It is several steps above the offer proto so I think that in that fact you do have some uniqueness to this project in regards to the size and designs and to go a step further this store actually houses several different types of businesses, tenants if you want to say that just happen to be included under one roof. The list goes on, and on, the vision center, one-hour photo, pharmacy, Tire Lube Express, Grocery, Retail, it is almost like a miniature mall housed inside one large building so I think that brings a uniqueness to this project to satisfy that criteria.

Under adjacent property, I know that staff had noted that it would have an affect on direct competitors. Just looking at this area already there is already direct competition with the businesses that are there. Looking at Dillons they have signage for dry-cleaning, flower, video, Chinese food, Chinese kitchen, pharmacy and this and that and I think they have a total of eight signs on their front façade to be exact. They are in direct competition with a dry cleaners right across the street, they would be in direct competition with the video store right across the street and they would be in direct competition with anything else. I think to say that we would come in and have a negative impact as a direct competitor I don't know how you could hold us to that comment when you already got that from adjacent properties already in the location.

The hardship is that there are several different business in the area that offer the same types of services. What we are asking is just for the same opportunity to be able to identify those services that are available at this location because not every Wal-Mart is the exactly the same in every single location so we want to be able to offer and most of these signs are for identification purposes just to let the consumer know what type of services are available at this location. So if they don't know they will head on down to the guy down the street and would end up in turn costing us that business.

I would also like to point out here that we currently could get all the signage that we are requesting on the building. The only problem is that we would have to compact it into because we are allowed three signs but in talking to Central Inspection you are allowed to draw a box to include several different signs in that one box, however you have to include the dead space of the wall there. So with

the size of our building that ends up taking us for each sign above the 400 allowed square feet for each separate sign. So if we compressed every sign into a box that would equal the 400 square feet which would give you a cluttered and confused look on the building then we could actually have been approved without even coming for a variance. We are coming to look for a variance because we want to give a building that has and is more intent with what the ordinance is calling out. It is asking for something that gives a better appearance we have already offered a store for this area that is steps above your ordinary "big box" store and we want to continue with that with the signage that we are requesting. So this is why we are here asking for the variance to give the best possible appearance that we can.

To meet the public interest just to note again, that we could have already actually received a variance allowing this signage if we would have crowded them together. But it would have been an unsightly arrangement and we think that it best serves the public for us to present a sign package that gives the best overall appearance of this store instead of one that gives a cluttered and confused look. I think that would best serve public interest.

Also there isn't any signage on this store that will be visible from the residential from the west. There are the four little signs on the rear of the building which you see on the rear of the elevation I think there are two tires and two lube express those signs are about a foot tall and there is the church that is directly behind, they would be visible from there but as far as any residential there is a row of trees behind the church that shades the residence there and you would almost have to be looking to see the signs to be able to see them from any residence. The setback from the road is approximately anywhere from 400 to 600 feet somewhere in there so it avoids in distraction to motorist or pedestrians coming by. I just don't see or that it would affect or have any harm on public interest there.

To meet the spirit and intent of the ordinance just reading through the purpose of the ordinance some of the points that stood out was to eliminate potential hazards to motorize and pedestrians. Encourage signs that were harmonious to buildings and sites which they occupy. Eliminate excessive and confusing sign displays, improving and preserving the visual qualities of community. I think with the sign package that we are coming to you with and the reasoning for us coming to you for the variance is to offer a better looking sign package more than meets the spirit and intent of the ordinance. I will save the rest of my time for any questions that the Board may have.

SKELTON: Is this an exact representation of what the finish product is going to look like? Or is there anything that is going to be put on that is not listed here?

SEMERICK: No sir, that is it. Actually we could on the south end if we wanted to we could put another Wal-Mart on that elevation there. But, this is exactly what is on there is what we want to put on the store.

SKELTON: The Penzoil sign is gone.

SEMERICK: What we have there is the little box representing an oil logo because we don't know if it will be Penzoil, Quaker State, I am not sure exactly, it

is a box representing the oil logo.

If I could make one other note, I meant to state this to that there are stores like Dillons for example had a total of eight separate signs on their façade so there already is this type of excessive signage out there that is as long as it is done in a manner that looks best I know that there was a concern last time that you are going to be setting a precedence from now on. I think the twenty percent is a guideline to look at too because we have a building that our front façade is 17,000 square feet 20 percent of that we could actually get 3,400 square feet and all that we want to put on is 900 square feet which is proportional to what stores in that area are going to be allowed to do. Take example Dillons the length of their front building is 200 feet you take that times their height which I am approximating to be about 25 feet I mean there you are looking about 4,500 square feet of front façade, they are going to get about 900 square feet there. Whether they use all that or not that is their decision, we have come way under what we are actually going to be allowed. What we are asking for, the sheets that I gave you that I broke down the signage for you I think I am asking for six or seven different signs because what we would like to do is group the signs together. Like for instance the Always Low Prices make that one sign, the Always Food Center make that one sign, so we are only asking for the signage that is shown on the rendering that you have there.

PITTS: Thank you. Maybe I should ask first is there anyone else in the audience that would like to speak in favor of granting the variance? Is there anyone else in the audience to speak in opposition to the request? If not we will restrict the remainder of the discussion to the bench. I wish Bradley was here today. It appears that the questions that he had addressed and one of the reasons why we deferred this has been favorably considered. I would like to regress briefly, Scott, I apologize I didn't really and I was doing something while you were at the podium did you address any issues that we should be concerned about.

KNEBEL: No, I have not brought any additional information.

PITTS: Thanks. Does anyone have any additional comments on this case?

SKELTON: I want to see the justifications other people would have for the five criteria. That is what the law says.

PITTS: One of the things that we had mentioned you generally speak and the applicant helps us out and provides a few guidelines to the five criteria that we must consider. It does appear that he has done this. I am not sure that we have got five here. Spirit and Intent we have got that don't we? Ok, the applicant has provided us with his five reason as to why he feels we should grant the request as well as staff has provided us with the necessary criteria that they don't think that they should.

SKELTON: The Dillons Corporation certainly was provided information regarding this case? I don't see them here.

PITTS: One of the neighbors?

SKELTON: Correct.

PITTS: If there is no other discussion the Chair will certainly entertain a motion.

MILLER: I want to clarify that, they are probably just leasing that site so whoever owns it would have been notified. We don't see Dillons on the ownership list but whoever owns the property on the corner across the street would have been noticed.

SKELTON: Thank you Dale, that is a good point.

PITTS: I should think that basically I would feel that I am in favor of approving the request unless there is someone who feels very strongly that we should not and if there are any strong feelings either for or against I would like to hear it. Again this is a case where we will need four people to vote one-way or the other on it. I am not saying that I want to be a die-hard at all but it does look like to me that this is something that has met the requirements.

SKELTON: Well, this age of large retail spaces Mr. Chairman, this is again on the precedent side of things so are we going to be forced or not necessarily forced but are we going to say now that just because they built a big store we can give them a variance for a large sign? That is my comment on precedent. Of course as I mentioned last meeting that I think there is a fairness issues. I think that when it comes to advertising, signs are just one of the mediums that companies use. I am not sure that they would incur that much of a hardship. You know I watch T.V. and I am sure that everyone else in here watches T.V. and we see commercials on T.V. for Wal-Mart. If there is going to be a bank, is there a sign for the bank on the outside for example? There is not, but those are my comments.

PITTS: Are there any other comments? I was looking at something and I am not wanting to delay anything here and I don't know where I found it so I will address this to our legal person. Do we absolutely have to vote up or down on this? Item V shows in the Appeals processes that as soon as possible following the close of the public hearing but in no event later than 40 days from the hearing date unless the applicant consents to a longer time the Board of Zoning Appeals shall make a decision.

DICKGRAFE: This is treated differently than an Appeal. The variance is what was requested we have had in the past modifications that were granted and those were not Appealed because that was something that the applicant could live with. I have some concerns that if they are asking for eight signs and we approve a variance for two signs where that would actually leave the applicant frankly. I think from a long term stand-point that was what was requested it either needs to be granted or denied and then the applicant has their rights to appeal to District Court.

PITTS: Having heard that I think the Chair is still ready to entertain a motion.

SKELTON: Mr. Chairman, I will vote in favor of a motion that can in my opinion justify the five criteria and I am not prepared to make that motion however, I do not have the words for it.

PITTS moves that the findings for fact for uniqueness, adjacent property, hardship, public interest, spirit and intent have been found to exist for a variance #1 and #2.

DICKGRAFE: You need to specify what facts you believe meet those criteria. Because unlike in normal cases you are not going to be living with the Secretary's Report because they have found that those facts do not exist.

PITTS: I can't use a blanket statement such as the building of the project as he has used?

DICKGRAFE: I think if you want to incorporate his rationale into your motion you can do that. You can find whatever facts there are that exist I am just telling you from a legal stand-point you need to make sure that you have some facts or at least some statements to support this.

PITTS: Well, what I said was that the findings of facts have been found to exist as reported in this.

DICKGRAFE: So you are wanting to incorporate the five factors and the evidence supporting those as submitted by the applicant?

PITTS: Yes, that is what I would have said, and I will make that into a motion. Is there a second? Is there a second?

MOTION FAILS FOR LACK OF SECOND.

PITTS: Now where do we go?

DICKGRAFE: You can have a motion to deny or a motion to defer. I believe would be the points of order.

PITTS: The Chair is open for a motion to deny.

RUANE: We can't recall the question?

DICKGRAFE: Yes, I suppose you can if you want.

RUANE: Let's recall the question.

PITTS: Recall the question. So the motion is back on the table it didn't get a second. So I think we need a second.

PITTS moves RUANE seconds: It has been moved and seconded that the findings of fact as presented by the applicant for items for uniqueness, adjacent property, hardship, public interest, spirit and

intent have been found to exist and that the recommendation for the approval of variance one and two is hereby made and it has been seconded.

SKELTON: Is this a motion to approve the whole thing?

PITTS: To approve the variance, one and two. It has been moved and seconded are we ready to vote?

MOTION FAILS 2-2.

DICKGRAFE: Which means that unless someone wants to make a motion to Deny with the thought that someone will change their mind then under our bylaws, I am sorry, our bylaws are going to defer it a month. He would be first on the Agenda. I am thinking that from our stand-point 60 days would be better.

SKELTON: The question now is that we are going to have an election and this is perhaps going to change the composition of the Council for the next term. Under normal circumstances I would say that we need to try and get our other members here because I have been coming to these meetings quite regularly and I don't see any consistency here and we are paying the price now. We have an applicant coming back for a third time, another applicant that is going to come back and it is all in my opinion due to not having enough having a full table here. That is why there is seven people here for a reason. So I think the members of this Board need to get their act together and show up when we have a member because I don't like to see this problem. I mean no matter what my opinion is a yes or no for this project you could have won today if the people were here. Whatever needs to be done, whatever staff can do.

PITTS: Nevertheless, the Chair still can entertain a motion to Deny the variance request.

SKELTON: Mr. Chairmen, I made a motion to Deny this request the last meeting so I will do so again.

SKELTON moves ROGERS seconds: I MOVE THAT THE BOARD ACCEPT THE FINDINGS OF FACT AS SET FORTH IN THE SECRETARY'S REPORT; AND THAT ALL FIVE CONDITIONS SET OUT IN SECTION 2.12.590(b) OF THE CITY CODE AS NECESSARY FOR THE GRANTING OF A VARIANCE HAVE BEEN FOUND NOT TO EXIST AND THAT THE VARIANCE BE DENIED.

MOTION FAILS 2-2.

DICKGRAFE: I believe the applicant indicated kind of off the record to me that he did not have a problem if it was deferred 60 days.

SKELTON: Okay.

DICKGRAFE: I think that Dale and I anticipate that there will be a number of people from the public here next time to talk which will make that Agenda long.

PITTS: Sorry, Mr. Semrick.

DICKGRAFE: Just to make sure that the record has reflected that it is clear that it has been deferred for 60 days in light of the non-vote or non-sufficient number.

PITTS: Is that what you are saying? That it won't be back 30 days from now so it is deferred for 60 days?

DICKGRAFE: Yes.

PITTS: Two months or our meeting in May.

SEMRICK: Do want me to leave that stuff or bring it back?

SKELTON: I would like to keep this.

PITTS: Report from Central Inspection regarding compliance with requirements of various cases.

J.R. COX OFFICE OF CENTRAL INSPECTION: I will make this very brief today. I have one report it is BZA 27-99 it was a front yard setback variance it was at the Wichita Country Club for an irrigation pump house and it is in compliance.

PITTS: It is what?

COX: It is incompliance. I have no further reports and I will entertain questions from the Board if you have any.

PITTS: That is one of the items that we have had that the construction was already almost complete before they came to us is that right?

COX: As I recall it was at least under construction, correct.

PITTS: Thanks a lot J.R. Is there any other business to come before the Board?

MEETING ADJOURNED 2:35 p.m.